

1 CENTER FOR DISABILITY ACCESS
2 Chris Carson, Esq., SBN 280048
3 Raymond Ballister Jr., Esq., SBN 111282
4 Phyl Grace, Esq., SBN 171771
5 Dennis Price, Esq., SBN 279082
6 Mail: PO Box 262490
7 San Diego, CA 92196-2490
8 Delivery: 9845 Erma Road, Suite 300
9 San Diego, CA 92131
10 (858) 375-7385; (888) 422-5191 fax
11 phylg@potterhandy.com

12 Attorneys for Plaintiff

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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 **Jovany J. Munoz,**

19 Plaintiff,

20 v.

21 **Team Kira, LLC**, a Nevada Limited
22 Liability Company; and Does 1-10,

23 Defendants.

24
25 **Case No.**

26 **Complaint For Damages And
27 Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

28 Plaintiff Jovany J. Munoz complains of Defendant Team Kira, LLC, a
19 Nevada Limited Liability Company; and Does 1-10 ("Defendants"), and
20 alleges as follows:
21
22

23 **PARTIES:**

- 24 1. Plaintiff is a California resident with physical disabilities. He is a
25 paraplegic who uses a wheelchair for mobility.
26 2. Defendant Team Kira, LLC owned the real property located at or about
27 104 East Whittier Blvd., Montebello, California, in March 2018.
28 3. Defendant Team Kira, LLC owns the real property located at or about

1 104 East Whittier Blvd., Montebello, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12

13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to the property where The Best Family Discount Store
27 ("Store") is located in March 2018 to shop.

28 9. The Store is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 10. Parking spaces are one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Store.

4 11. Unfortunately, and even though there was a parking space marked and
5 reserved for persons with disabilities in the parking lot serving the Store, the
6 parking stall and access aisle reserved for persons with disabilities were not
7 level.

8 12. Plaintiff used the parking stall designed and reserved for persons with
9 disabilities in the parking lot serving the Store because plaintiff was
10 accompanied by a friend when he visited the Store.

11 13. Had plaintiff not been accompanied by a friend, he would not have been
12 able to use the parking stall reserved for persons with disabilities.

13 14. The parking stall and access aisle marked and reserved for persons with
14 disabilities had slopes greater than 2.1%.

15 15. Currently, the parking stall and access aisle are not level and there are
16 inaccessible slopes in both the access aisle and parking stall.

17 16. Paths of travel are one of the facilities, privileges, and advantages
18 offered by Defendants to patrons of the Store.

19 17. Unfortunately, there were no accessible paths of travel to access the
20 various levels of the Store on the day of plaintiff's visit.

21 18. The only way to access the various levels of the Store was to use a flight
22 of stairs. There was no ramp or elevator at the Store for use by disabled
23 customers wishing to access the various levels of the Store.

24 19. Currently, there are no paths of travel to access the various levels of the
25 Store.

26 20. Finally, the transaction counter at the Store was not accessible to
27 plaintiff. The transaction counter was 42 inches in height on the day of his visit.
28 There was a lowered glass section nearby but that was 40 inches above the

1 finish floor and was not accessible to plaintiff.

2 21. Plaintiff personally encountered these barriers.

3 22. These inaccessible conditions denied the plaintiff full and equal access
4 and caused him difficulty, discomfort, and embarrassment.

5 23. Plaintiff plans to return and patronize the Store but will be deterred from
6 visiting until the defendants remove the barriers.

7 24. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 25. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 26. For example, there are numerous paint/stripe companies that will come
17 and stripe a level parking stall and access aisle and install proper signage on
18 rapid notice, with very modest expense, sometimes as low as \$300 in full
19 compliance with federal and state access standards.

20 27. Another common barrier removal project is modifying transaction
21 counters to make a portion of the counter accessible. This is a simple
22 construction task, well within the capabilities of any general contractor. The
23 task can be completed easily and for a modest price.

24 28. Plaintiff is and has been deterred from returning and patronizing the
25 Store because of his knowledge of the barriers that exist. Plaintiff will,
26 nonetheless, return to the business to assess ongoing compliance with the
27 ADA and will return to patronize the Store as a customer once the barriers are
28 removed.

1 29. Given the obvious and blatant nature of the violations and barriers
2 alleged herein, the plaintiff alleges, on information and belief, that there are
3 other violations and barriers on the site that relate to his disability. Plaintiff will
4 amend the Complaint to provide proper notice regarding the scope of this
5 lawsuit once he conducts a site inspection. However, please be on notice that
6 the plaintiff seeks to have all barriers related to his disability remedied. See
7 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
8 encounters one barrier at a site, he can sue to have all barriers that relate to her
9 disability removed regardless of whether he personally encountered them).

10 30. Additionally, on information and belief, the plaintiff alleges that the
11 failure to remove these barriers was intentional because: (1) these particular
12 barriers are intuitive and obvious; (2) the defendants exercised control and
13 dominion over the conditions at this location and, therefore, the lack of
14 accessible facilities was not an “accident” because, had the defendants
15 intended any other configuration, they had the means and ability to make the
16 change.

17

18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
19 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 32. Under the ADA, it is an act of discrimination to fail to ensure that the
25 privileges, advantages, accommodations, facilities, goods and services of any
26 place of public accommodation is offered on a full and equal basis by anyone
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
28 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 1 a. A failure to make reasonable modifications in policies, practices,
2 or procedures, when such modifications are necessary to afford
3 goods, services, facilities, privileges, advantages, or
4 accommodations to individuals with disabilities, unless the
5 accommodation would work a fundamental alteration of those
6 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 7 b. A failure to remove architectural barriers where such removal is
8 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
9 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
10 Appendix “D.”
- 11 c. A failure to make alterations in such a manner that, to the
12 maximum extent feasible, the altered portions of the facility are
13 readily accessible to and usable by individuals with disabilities,
14 including individuals who use wheelchairs or to ensure that, to the
15 maximum extent feasible, the path of travel to the altered area and
16 the bathrooms, telephones, and drinking fountains serving the
17 altered area, are readily accessible to and usable by individuals
18 with disabilities. 42 U.S.C. § 12183(a)(2).

19 33. Under the 1991 Standards, parking spaces and access aisles must be
20 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
21 Standards § 4.6.3. Here, the access aisle and parking space is not level. Under
22 the 2010 Standards, access aisles shall be at the same level as the parking
23 spaces they serve. Changes in level are not permitted. 2010 Standards 502.4.
24 “Access aisles are required to be nearly level in all directions to provide a
25 surface for wheelchair transfer to and from vehicles.” 2010 Standards § 502.4
26 Advisory. No more than a 1:48 slope is permitted. 2010 Standards § 502.4.

27 34. Here the failure to provide level parking is a violation of the law.
28

1 35. There must be an accessible path of travel that connects all buildings,
2 elements and spaces on the same site. 1991 Standards § 4.3.2. To be
3 considered an accessible route, there cannot be a stair or step. 1991 Standards
4 § 4.3.8. Any such change in level measuring greater than $\frac{1}{2}$ inch must have a
5 ramp or lift. *Id.* 2010 Standards § 303.4.

6 36. Here, the various flights of stairs are a violation of the ADA.

7 37. In areas used for transactions where counters have cash registers and
8 are provided for sales or distribution of goods or services to the public, at least
9 one of each type shall have a portion of the counter which is at least 36 inches
10 in length with a maximum height of 36 inches above the floor. 1991 Standards
11 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
12 counter is a parallel approach, such as in this case, there must be a portion of
13 the sales counter that is no higher than 36 inches above the floor and 36 inches
14 in width and must extend the same depth as the rest of the sales or service
15 counter top. 2010 Standards § 904.4 & 904.4.1.

16 38. Here, no such accessible transaction counter has been provided in
17 violation of the ADA.

18 39. A public accommodation must maintain in operable working condition
19 those features of its facilities and equipment that are required to be readily
20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 40. Here, the failure to ensure that the accessible facilities were available
22 and ready to be used by the plaintiff is a violation of the law.

23 41. Given its location and options, plaintiff will continue to desire to
24 patronize the Store but he has been and will continue to be discriminated
25 against due to the lack of accessible facilities and, therefore, seeks injunctive
26 relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 42. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code §51(b).

11 43. The Unruh Act also provides that a violation of the ADA, or of California
12 state accessibility regulations, is a violation of the Unruh Act. Cal. Civ. Code,
13 § 51(f); Arnold v. United Artists Theatre Circuit, Inc., 866 F. Supp. 433, 439
14 (N.D.Cal.1994).

15 44. Defendants’ acts and omissions, as herein alleged, have violated the
16 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
17 rights to full and equal use of the accommodations, advantages, facilities,
18 privileges, or services offered.

19 45. Defendants’ acts and omissions, as herein alleged, have also violated
20 the Unruh Act by denying, or aiding or inciting the denial of, Plaintiff’s right to
21 equal access arising from the provisions of the ADA (see Plaintiff’s First Cause
22 of Action).

23 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
24 discomfort or embarrassment for the plaintiff, the defendants are also each
25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
26 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: April 30, 2018

CENTER FOR DISABILITY ACCESS

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15 By:
16

17 
18 Chris Carson, Esq.
19 Attorney for plaintiff